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An Equal Opportunity Employer

TO: WIB Directors
WIB Chairs
DWD Program Directors

FROM: Alan D. Degner
Commissioner

DATE: June 14, 2004

SUBJECT: DWD Policy 2004-05
Nondiscrimination Requirements of the Workforce
Investment Act

RE: All WIA Funding Recipients

PURPOSE: To communicate the nondiscrimination and equal opportunity requirements of the Workforce Investment Act (WIA).

RESCISSION: DWD Policy #2002-12, dated February 17, 2003

CONTENTS:

Section 188 of the WIA prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. The following requirements are taken from the regulations at 29 CFR part 37 and must be incorporated into the systems and practices of all recipients for assurances of nondiscrimination. Any program or activity that receives federal financial assistance under WIA Title 1 is a recipient and therefore subject to these requirements. Please note that complete Complaint Processing Procedures are included in this communication.

♦ **DESIGNATION OF EQUAL OPPORTUNITY OFFICER**

Every recipient must designate an Equal Opportunity (EO) Officer except small recipients and service providers. A small recipient is defined as serving fewer than 15 beneficiaries during the grant year and employing fewer than 15 employees on any given day during the grant year.

The EO Officer must be a senior level employee; must be qualified in education, experience & training, must not be in a position that would pose a conflict of interest; must have sufficient staff to carry out his/her responsibilities; may have other duties, but responsibilities as EO Officer must take priority.

Joyce Howard, is the designated EO Officer for the Indiana Department of Workforce Development (DWD) and she will serve as the liaison for the state to the Department of Labor- Civil Rights Center (CRC). Ms. Howard may be reached at the Department

of Workforce Development, 10 North Senate, Room 115, Indianapolis, IN 46204. The telephone number for the EO Officer is (317) 232-0603.

Each recipient is to designate and publish the name and contact information of their EO Officer. The local EO Officer will be responsible for handling complaints of discrimination and facilitating the assurances of the nondiscrimination requirements.

The DWD EO Officer will be responsible for providing training and technical assistance to local EO officers.

◆ NOTICE & COMMUNICATION REQUIREMENTS

DWD will provide the required notice with the prescribed language to the local Workforce Investment Boards (WIBs).

The WIBs must ensure that the prescribed notice is provided to registrants, applicants, and eligible applicants/registrants, participants, applicants for employment and employees, unions or professional organizations that hold collective bargaining or professional agreements with the recipient, subrecipients that receive WIA Title 1 funds; and members of the public, including those with impaired vision or hearing. WIBs must also ensure that communication with individuals with disabilities are as effective as communication with others.

Participants are to provide acknowledgement of the notice, either electronically if their records are maintained electronically, or by their signature to the notice where case files are maintained.

The notice must also be provided in languages other than English where need is determined.

All brochures, pamphlets, and other publications which promote WIA programs must include the following tag line: “This WIA Title 1-funded program/activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.” Where a telephone number is provided, the materials must also include a TDD/TTY or relay service number.

◆ REVIEW ASSURANCES, JOB TRAINING PLANS, CONTRACTS, POLICIES

Each application for financial assistance under Title 1 of WIA must include the following assurance language:

“As a condition to the award of financial assistance from the Department of Labor under Title 1 of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- **Section 188 of the Workforce Investment Act of 1998 (WIA)**, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title 1-financially assisted program or activity;
- **Title VI of the Civil Rights Act of 1964**, as amended, which prohibits discrimination on the basis of race, color and national origin;
- **Section 504 of the Rehabilitation Act of 1973**, as amended, which prohibits discrimination against qualified individuals with disabilities;
- **The Age Discrimination Act of 1975**, as amended, which prohibits discrimination on the basis of age, and
- **Title IX of the Education Amendments of 1972**, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title 1-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title 1-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance."

The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title 1 of the WIA is made available.

◆ UNIVERSAL ACCESS

Recipients must take appropriate steps to ensure that they are providing universal access to the WIA Title 1-financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities and individuals in differing age groups. Reasonable efforts may include contacts with community groups, schools, organizations that provide services to the disabled, and also with minority organizations. WIBs must have a strategy for meeting this requirement and be prepared to provide such information upon request to the DWD EO Officer.

◆ COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973

In providing any aid, benefits, services or training under a WIA Title 1-funded program or activity, a recipient must not, directly or through contractual licensing, or other arrangements, deny a qualified individual with a disability the opportunity to

participate in or benefit from the aid, benefits, services, or training on the basis of a disability.

Recipients must provide for reasonable accommodations, modification of programs and architectural accessibility for individuals with disabilities

Programs/activities must be administered in the most integrated setting.

Communications with persons with disabilities must be as effective as communications with others.

Recipients must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.

In circumstances where a recipient believes that the proposed accommodation/modification would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

◆ DATA & INFORMATION COLLECTION & MAINTENANCE

Each recipient must collect and maintain records to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of the WIA.

Records must be collected and maintained on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status of the specified groups.

The records must be stored in a manner that ensures confidentiality and used only for purposes of recordkeeping and reporting, determining eligibility for WIA Title 1-funded programs or activities or other uses as authorized by law.

Recipients must maintain and submit to DWD, as required by DWD policy, log of complaints that allege discrimination. The log must include the name and address of the complainant, the grounds for the complaint, a description of the complaint, the date the complaint was filed, and the disposition of the complaint.

Each recipient must maintain said records for a period of not less than three years from the close of the applicable program year.

Records regarding complaints and actions taken on complaints must be maintained for a period of not less than three years from the date of resolution of the complaint.

Grant applicants and recipients must notify DWD of any administrative enforcement actions or lawsuits filed regarding discrimination.

◆ MONITORING RECIPIENTS FOR COMPLIANCE

DWD will establish and publish procedures for the periodic monitoring of programs and activities operated under WIA Title 1 for compliance with the nondiscrimination requirements.

The procedures will provide for:

- (a) a statistical analysis of records and data;
- (b) an investigation of any significant differences noted in the data analysis;
- (c) an assessment to determine whether the recipient has fulfilled its administrative obligations under section 188, e.g. recordkeeping and notice requirements.
- (d) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found.

◆ COMPLAINT PROCESSING PROCEDURES

Who may file a complaint of discrimination under WIA Title 1?

Any person who believes that either s/he or any specific class of individual has been or is being subjected to discrimination prohibited by WIA Title 1 may file a written complaint either by him/herself or through a representative.

Where may a complaint be filed?

Complaints may be filed directly with the Grant Recipient's office or with the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.

When must a Notice of Final Action be provided?

Recipients must provide a decision to locally filed complaints within 60 days of receipt.

Complaint Procedures should provide for the following elements:

- A written complaint must be signed and dated by the complainant and include the complainant's name and address, the identity of the respondent, and a detailed description of the complainant's allegation.
- Recipients may use DWD complaint form #45153 for complaints, or they may develop their own form.
- Recipients are to provide a written acknowledgement of receipt of the complaint to the complainant. This acknowledgement letter should also include:
 1. A notice of the complainant's right to be represented in the complaint process;
 2. A list of issues raised in the complaint, and for each issue a statement whether the recipient will accept the issue for investigation or reject the issue, and if rejected, the reason for each rejection;

3. The option of resolving the complaint by alternative dispute resolution (ADR) instead of an investigation; and
 4. A statement that the complainant is due a decision or “notice of final Action” within 60 days after receipt of the complaint.
- * The “Notice of Final Action” should advise that if the complainant is dissatisfied with the decision s/he must appeal the local decision to the DWD EO Officer within 5 days of receipt of the decision. The DWD EO Officer will issue a response to the appeal within 25 days after receipt, or 90 days after the initial filing date of the complaint, whichever is later.

The Alternative Dispute Resolution (ADR) Process

The Regulations at 29 CFR 37.76 (c) provides that a recipient’s complaint procedures must include an alternative dispute resolution process.-The complainant should be given a choice whether to have the complaint resolved by an investigation or the ADR process.

- * If the complainant elects the ADR process, the Recipient should provide the following:
1. An impartial mediator who is trained in mediation techniques and the principles of equal opportunity;
 2. That both parties to the complaint must sign a consent form affirming that the contents of the mediation will be kept confidential and that both parties agree not to involve the mediator in any litigation;
 3. That any successful resolution obtained shall be recorded in a written settlement agreement and signed by both parties. There should be no written record or other recording made of the meeting;
 4. That if the parties cannot reach agreement under the ADR process, the complainant may file directly with the CRC (at the address provided herein) within 180 days of the alleged act of discrimination. In the event the agreement is breached, the non-breaching party may file the complaint directly with the CRC within 30 days of the date on which the non-breaching party learns of the Alleged breach.

Record-keeping Requirements

Complaint records must be retained for a minimum of 3 years following the resolution of the complaint. All complaints, whether processed by investigation or mediation, must be entered on the DWD complaint log (SF 46001) which is to be submitted quarterly to DWD attn: Joyce Howard, 10 North Senate Ave. Room SE115, Indianapolis, Indiana 46204. The logs should contain the names and address of the complainant, the grounds for the complaint, a description of the complaint, the date the complaint was filed, and the disposition of the complaint.

◆ **CORRECTIVE ACTIONS/SANCTIONS**

Where violations of the WIA Section 188 are found and voluntary compliance has not been achieved, DWD may implement the sanction procedures as provided by DWD Communication #98-59.

REVIEW DATE: July 1, 2006

OWNERSHIP: Commissioner's Officer

EFFECTIVE DATE: Upon receipt

ENDING DATE: Until rescinded

ACTION:

The information contained within must be disseminated to all WIA One-Stop Partners for implementation. WIBs should provide information on their designated EO contact to the Joyce Howard, EO Officer, Department of Workforce Development, 10 N. Senate Ave, Room 115, Indianapolis, IN, 46204 as soon as possible. Questions regarding this communication should be directed this office at (317) 232-0603.

CC: WIB Chairs
WIB Directors
Program Director